IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3529 OF 1997

Swastik Rubber Products Ltd.,)
a Company incorporated under)
the provisions of Companies Act,)
1956, having its factory at)
Khidki, Pune 411 003. ...).. Petitioner.

Versus

1) Shahurao Balwant Hiwale,)
Chikhalwadi, Khidki, Pune)
411 003.)
2) Shri P. S. Shinde,)
Presiding Officer, 2nd)
Labour Court, Pune.)
3) Shri S. G. Kadam,)
Member, Industrial Court,)
having his Court and Office)
at Pune.)... Respondents.

Mr.Sanjay Udeshi for the Petitioner.

Mr.S.R.Nargolkar for Respondent No.1.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 19TH JANUARY, 2007.

JUDGEMENT:

The petitioners have challenged the order of the Labour Court in Complaint (ULP) No. 264 of 1992 and the order of the Industrial Court in Revision Application (ULP) No. 100 of 1996.

2. The Labour Court had by the impugned order held that the petitioners had committed an unfair labour practice under items 1(b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act") by terminating the services of the respondent no.1 workman. The Labour Court had directed the petitioners to reinstate the respondent no.1 workman with 50% back wages from January 1993 till the date of reinstatement. The Industrial Court in revision confirmed the order by dismissing the revision application.

3. The respondent no.1 workman was employed with the

petitioners as "Helper" for 25 years. On 11th June, 1991 he went to collect his salary from the petitioners. Respondent no.1 claims that at this point of time, he was forced into signing a letter of the same date, which he later on realised was a letter of resignation. The respondent no.1, therefore, challenged the action of the petitioners by filing a complaint under the MRTU & PULP Act contending that the petitioners had illegally terminated his services on or from 11th June, 1991. The respondent no.1 had filed this complaint about 1 and 1/2 years after his alleged termination of services i.e. on 9th November, 1992. An application for condonation of delay was also filed by the respondent and by an order dated 7th February, 1995 the Labour Court condoned the delay in filing the complaint. In their written statement, the petitioners denied that they had terminated the services of the respondent workman. It was their contention that the respondent workman had voluntarily submitted his letter of resignation on 11th June, 1991 when he reported for work. Despite this pleading of the petitioners, the respondent workman did not lead any evidence before the Labour Court. The Deputy General Manager of the petitioners deposed before the Labour Court on their behalf. He stated that the letter of resignation was submitted by the respondent

and that his signature is appended to the letter. Both the documents as well as the signature were in Marathi and the workman had sufficient knowledge of this language to know the contents of the letter. It is apparent from the deposition of the petitioners' witness that the respondent workman was absent with effect from 8th May, 1991 and he reported for work on 11th June, 1991. In fact in the complaint the workman has pleaded that he reported on 11th June, 1991 only to collect his salary.

4. The Labour Court after considering the evidence on record observed that the letter of 11th June, 1991 was obtained from the workman by coercion and that there would have been no reason for the workman to resign from duty. The Labour Court, on the basis of specious reasoning, held that if it is to be presumed that the complainant i.e. respondent workman had submitted his resignation on 11th June, 1991 the petitioners ought to have mentioned while accepting the resignation that it had waived the notice period and damages payable under the Certified Standing Orders. The Labour Court also observed that since the petitioners had not mentioned this fact in the letter of acceptance nor had they initiated any proceeding for recovering damages against the respondent workman, it was obvious

that the letter of 11th June, 1992 was not voluntarily submitted. The Labour Court concluded that it was impossible that the management could have accepted the resignation and issued a clearance certificate along with the workman's dues on the same day. It, therefore, concluded that the petitioners had committed an unfair labour practices under items 1(b), (d) and (f) of Schedule IV of the MRTU & PULP Act. While granting reinstatement to the workman, the Labour Court observed that there was a delay on the part of the workman in approaching the Court, and therefore awarded only 50% of the backwages from January, 1993.

5. The Industrial Court confirmed the view of the Labour Court. It held that the resignation submitted by the respondent workman was not in conformity with the provisions of the Standing Orders and hence the letter of 11th June, 1991 should not be treated as one of voluntary resignation.

6. The workman in this case has not bothered to step into the witness box to substantiate the pleadings in the complaint. Pleadings cannot substitute oral and/or documentary evidence. This is a well settled proposition of law. The only evidence that is

available for deciding the issue is the deposition of the petitioners' witness. From the evidence, it is obvious that the respondent workman had knowledge of Marathi language and had submitted his letter of resignation. It is also apparent that after being absent for more than a month, he reported on 11th June, 1991 only to collect his dues. In fact in the complaint, the respondent workman has pleaded that on 11th June, 1991 he went to collect his salary from the petitioners. Therefore, the intention of the respondent workman regarding his employment was obvious. When he has not cared to lead evidence before the Labour Court, the Labour Court was in error in disbelieving the evidence of the petitioners. The Labour Court and the Industrial Court could not have arrived at the findings that they have on the basis of the evidence before them. Their findings are perverse and must be set aside in the writ jurisdiction of this Court.

7. The impugned order is set aside. Petition is allowed.

8. Rule made absolute.

9. No costs.

Sd/-

(SMT.NISHITA MHATRE, J.)